

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2397 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ABHARAMBHAI MAGANBHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR PJ YAGNIK for Petitioner  
MR SUDHANSHU PATEL, AGP for Respondents No. 1 & 2  
NOTICE SERVED for Respondent No. 3  
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 03/03/2000

ORAL JUDGEMENT

By means of filing this petition under Articles  
226 & 227 of the Constitution, the petitioner has prayed  
to issue a writ of certiorari or a writ of mandamus or  
any other appropriate writ, order or direction to quash

and set aside order dated May 30, 1981 passed by the Deputy Collector, Dholka Prant, Dholka declaring transfer of survey No. 27/3 of village Ranpur, Taluka : Dhandhuka, District : Ahmedabad, by respondent no.3 to the petitioner as being violative of provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("the Act" for short) as well as order dated March 31, 1987 passed by the State Government under section 35 of the Act rejecting revision application filed by the petitioner against the said order.

2. Deceased Suleman Nathu of village Ranpur was owner of Survey No.27/3 admeasuring 1 acre & 3 gunthas situated in the sim of village Ranpur, Taluka : Dhandhuka, District : Ahmedabad. Out of 1 acre & 3 gunthas of land, deceased sold 16 gunthas of land to the petitioner by a registered deed dated November 3, 1969 for a consideration of Rs. 2000/- and the petitioner was put in possession of the land sold. The Deputy Collector, Dholka Prant, Dholka issued notice dated March 3, 1986 under section 9 of the Act calling upon the petitioner to show cause as to why transfer of land in his favour should not be declared to be illegal and contrary to the provisions of Section 7 of the Act. A reply was given by the petitioner to the said notice wherein it was claimed that no notice under section 6(2) of the Act was served on the original owner of the land and, therefore, transfer was not illegal. It was also stated therein that the Deputy Collector, Dholka Prant, Dholka was not justified in exercising powers under section 9 of the Act after lapse of long period of 16 years and as the petitioner had spent a huge amount of Rs. 25,000/- to make land cultivable, transfer should not be declared to be illegal under the provisions of the Act. The petitioner as well as original owner of the land had produced certain documents before the Deputy Collector, Dholka Prant, Dholka in support of their case that the transfer should not be declared to be illegal under the provisions of the Act. The Deputy Collector took into consideration the report submitted by the inspection team which was submitted after perusal of record of rights. On consideration of the evidence led before him, the Deputy Collector held that the petitioner was not owner of a contiguous survey number or owner of recognised sub-division of a survey number and, therefore, the transfer was contrary to the provisions of section 7 of the Act. It was deduced by him that the transfer has resulted into fragmentation of the land and as transfer of land so as to create a fragment is prohibited by section 8 of the Act, transfer is illegal. In view of the above-referred to conclusions, the Deputy

Collector held that the transfer of land in question being contrary to the provisions of the Act was void and the petitioner was liable to be evicted. Therefore, by an order dated May 30, 1981, the Deputy Collector held that the transfer was void and directed summary eviction of the petitioner.

3. Feeling aggrieved by the aforesaid order, the petitioner invoked revisional jurisdiction of the State Government under section 35 of the Act. The State Government has also rejected the revision application by an order dated March 31, 1987. Therefore, the petitioner has filed the present petition and claimed reliefs to which reference is made earlier.

4. Mr. P.J.Yagnik, learned Counsel for the petitioner submitted that record of the case does not indicate that notice under section 6(2) of the Act was served on the original owner of the land and, therefore, the transfer could not have been regarded as illegal in view of the provisions of Section 7 of the Act. It was further claimed that power under section 9 of the Act is not exercised by the Deputy Collector, Dholka Prant, Dholka within the reasonable time as interpreted by this Court and the Supreme Court and, therefore, the impugned orders should be set aside. The learned Counsel for the petitioner pleaded that the transfer of land in question has not contravened any of the provisions of the Act and, therefore, the petition should be accepted.

5. Mr. Sudhanshu Patel, learned A.G.P. contended that transfer is void ab-initio and, therefore, the impugned orders should not be set aside on the ground that power under section 9 of the Act was not exercised by the Deputy Collector, Dholka Prant, Dholka within reasonable time. It was stressed that notice under section 6(2) of the Act was served on the original owner of the land and, therefore, the Deputy Collector, Dholka Prant, Dholka was justified in declaring transfer of land in favour of the petitioner as contravening the provisions of Section 7 of the Act. What was pleaded by the learned Counsel for the respondents no.1 & 2 was that transfer of the land in favour of the petitioner being in breach of mandatory provisions of the Act, the impugned orders should be upheld and the petition should be dismissed.

6. Heard the learned Counsel for the parties. Section 7 of the Act provides that no person shall transfer any fragment, in respect of which a notice has been given under sub-section (2) of section 6, except to

the owner of a contiguous survey number or recognised sub-division of a survey number. Thus, before a transfer can be regarded as contravening the provisions of Section 7 of the Act, service of notice under sub-section (2) of Section 6 of the Act on the owner of the land is a must. Transfer of fragment bar under section 7 does not apply where notice under sub-section (2) of section 6 of the Act is not issued. Though it is asserted by the learned Counsel for the respondents no.1 & 2 that notice under section 6(2) of the Act was served on the original owner of the land, the learned Counsel is not able to substantiate the same either by producing copy of notice or by producing record which would indicate that notice, in fact, was served on the original owner of the land. Neither the order of the Deputy Collector, Dholka Prant, Dholka, nor the order passed by the revisional authority mentions that any notice under section 6(2) of the Act was served on the original owner of the land after entry was made as contemplated by section 6(1) of the Act. Therefore, transfer of land in favour of the petitioner could not have been regarded as contravening the provisions of Section 7 of the Act.

7. Moreover, it is well settled that when the authorities under the Act propose to pass an order under section 9 of the Act for declaring transaction or transfer contrary to the provisions of the Act to be null and void and to pass consequential orders, it is incumbent upon them to exercise the said statutory power within a reasonable time. As observed in *RANCHHODBHAI LALLUBHAI PATEL v. STATE OF GUJARAT AND OTHERS*, 1984(2) GLR 1225 if concept of exercise of power within a reasonable time is kept out, any statutory power can be exercised after a number of years or decades and in the meantime, the persons who are likely to be affected may have materially altered their position and irreparable injury may cause to them. Exercise of powers after unduly long delay without any cogent explanation is never approved by the court of law and, therefore, in my view exercise of powers after a lapse of 16 years in absence of any explanation coming-forth from the Deputy Collector, Dholka Prant, Dholka cannot be regarded as the power having been exercised within a reasonable time. It is well settled that where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inhere its exercise within a reasonable time. {See : *State of Gujarat v. Patel Raghav Natha and others* (1970) 1 SCR 335)}. As it is not established that notice under section 6(2) of the Act was served on the original owner of the land and as power under section 9 of the Act is

not exercised by the Deputy Collector, Dholka Prant, Dholka within a reasonable time, I am of the opinion that the impugned orders are liable to be set aside.

For the foregoing reasons, the petition succeeds. The order dated May 30, 1981 passed by the Deputy Collector, Dholka Prant, Dholka under section 9 of the Act declaring that transfer of the land in question in favour of the petitioner is void and directing summary eviction of the petitioner, is set aside and quashed. So also, revisional order dated March 31, 1987 passed by the State Government confirming the order of the Deputy Collector, Dholka Prant, Dholka is also hereby set aside and quashed. Rule is made absolute accordingly, with no order as to costs.

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3.3.2000 (J.M.Panchal,J.)

(patel)